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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,925	10/18/2001	Jean-Yves Bacques	11027.25USWO	3360
23552	7590	12/29/2004	EXAMINER	
MERCHANT & GOULD PC			MAI, TRI M	
P.O. BOX 2903			ART UNIT	
MINNEAPOLIS, MN 55402-0903			PAPER NUMBER	

3727

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/980,925

Applicant(s)

BACQUES ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,8,10,11,13,14,17,19-21,24-31,33,39 and 41-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,7,9,12,15,16,18,22,23,32,34-38 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/16/02, 03/08/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

1. Claims 3, 5, 8, 10-11, 13-14, 17, 19-21, 24-31, 33, 39, and 41-49 are withdrawn. Applicant traverses the election/restriction as set forth in the previous Office Action. It is noted that the application contains numerous embodiments, and at least claims 1 and 22 are found unpatentable as set forth below. Thus there is no single general inventive concept. Furthermore, it is noted that each of the disclosed embodiment and invention is required to be searched and considered separately, e.g. the claims directed to the process and the apparatus must be searched in a different class 493.

Furthermore, considering the numerous indefinite errors and the numerous claims in this application. The burden on the examiner is significant considering that each claim must be searched and considered separately.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the container formed by the blank in Fig. 4 must be shown along with the functionalities of separating the container must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes

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made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. **The objection to the drawings will be held in abeyance.**

The cut line should be should be recognized as different lines from fold lines. It is unclear whether line 38, 37 are fold lines.

3. Claims 1, 2, 4, 6-7, 9, 12, 15-16, 18, 22, 23, 32, 34-38, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"said first wall" has no antecedent basis.

"and in that one or the other sidewalls" is confusing. "that one" and "the other sidewalls" have no antecedent basis.

Regarding claim 2 "the partially precut, upper connecting line" has no antecedent basis.

In claim 4, the first sidewall" has no antecedent basis

In claim 6, "the upper connecting line" has no antecedent basis.

it is unclear whether the precut in claim 4 readable on the elected species. If yes please point out where precut line is. If not, please withdraw the claim. Failure to response would not be considered as bona fide.

It is unclear what is meant by "fascia" in claim 4.

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In claim 12, “partially precut section(s) of leaves” has no antecedent basis. The parenthesis also renders the claims indefinite.

Regarding claim 15, the parenthesis renders the claims indefinite.

“or ..on the other hand” is confusing.

It is unclear what is meant by a closed line in claim 12.

Regarding claim 18, “leaf” has no antecedent basis. It is unclear whether “transverse flap” is the same as set forth in claim 1. If yes this is a double inclusion. It is unclear what “the central leaf” is being recited of the first or second shape. It is unclear what is the precut bottom portion. Please identify all of the claimed elements in the elected embodiment as set forth in the specification. “the rest of the assembly” has no antecedent basis.

In claim 22, and 35 “further comprising” is confusing. Is there a plurality of shapes further having two shapes?

“leaf or panel” is confusing. Please delete the alternative definition.

In claim 22, “the central leaf” has no antecedent basis. “means of at least” is not a proper 112, 6<sup>th</sup> paragraph recitation. It is unclear what comprises “the shapes”. “a second transverse flap or at least one side leaf” is a double inclusion as previously set forth. “a first transverse flap” is a double inclusion as previous set forth in “central leaf or panel and side leaves or panels”. It is noted that claim 22 is very confusing with respect to the various cut lines and leaves or panels. Applicant is required to identify all the various cut lines and leaves or panels in this claim and/or any new claims.

In claim 32, “first portions” has no antecedent basis.

Regarding claim 35, the claim recites elements previously recited in claim 22.

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It is noted that the claims have a numerous indefinite errors. Applicant is required to correct all remaining errors in response to this Office Action.

4. Claims 1, 2, 6, 7, 12, 15, 16, 18, 22, 23, 32, 34-38, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuhn et al. (5555982). Kuhn teaches a packing case in two sections, made of corrugated board sheet material comprising two shapes including a first shape forming a tray 19 and a second shape forming a lid 100 wherein the case comprises a first transverse sidewall 18 arranged to be grasped by a user joined to the rest of the case by precut connecting lines allowing the first wall to be manually torn off by the user from the rest of the case, the two walls of the trays are fixed to the sidewalls of the lid by precut portions 101 and gluing points enabling the separation between walls by application of a force perpendicular to the walls as claimed.

Regarding claim 6, note the recess in 8.

Regarding claim 7, 12, note figure 6.

Regarding claim 15, the second shape has three panels as claimed and joins to the first shape by gluing points as claimed.

Regarding claim 16, note the two sets of flaps at 14, 25, 31 on one side and 32, 26 on the other side.

Regarding claim 22, Kuhn teaches an assembly of shapes comprising two shapes, each respectively formed from a central leaf or panel (104, 12) side leaves or panel (106, 110; 14, 18) with the first shape to form a tray (19) and a second shape intended to form a lid (100) of the case. The first shape 19, comprising a second transverse flap or at least one side leaf 14 joining to the second shape by at least precut portion with glue at portion 101, and a first transverse flap 18, joined on the other side to the central leaf by precut

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lines at 82 and in that a side panel of the second shape 106 is fit to be glued to the first transverse flap and is joint to the central panel by a pre-cut connecting line

5. Claims 1, 2, 4, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Alain et al. (FR2793803). Alain teaches a packing case in two sections, made of corrugated board sheet material comprising two shapes including a first shape forming a tray 10 and a second shape forming a lid 10 wherein the case comprises a first transverse sidewall 42 arranged to be grasped by a user joined to the rest of the case by precut connecting lines allowing the first wall to be manually torn off by the user from the rest of the case, the two walls of the trays are fixed to the sidewalls of the lid by gluing points 64 enabling the separation between walls by application of a force perpendicular to the walls (at least perpendicular to the upper edges of the walls) as shown in Fig. 4.

Regarding claim 4, as best understood view of the 112 matters above, the lid in Alain has a fascia.

#### ***Election/Restrictions***

6. It is noted that applicant elects two species, one is shown in Fig. 4, and 5, and the other is shown in Fig. 5 and 6. Since there are numerous indefinite errors and to avoid confusion with respect to various elements recited in the claims. Applicant is further required to further elect a single disclosed species.

Group a: the container in figure 4, and

Group b: the container in figures 5-6 (namely the blanks shown in Figs 1-2).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
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